# Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters


# and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

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# U.S. Customs Service

## *Treasury Decisions*

(T.D. 80-10)

### Entry of Merchandise—Customs Regulations, Amended

Informal entry of merchandise which qualifies for entry free of duty under the generalized system of preferences; section 143.23, Customs Regulations, amended

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 143—APPRAISEMENT AND INFORMAL ENTRIES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends section 143.23, Customs Regulations, to permit the informal entry on Customs Form 7523, "Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release," of merchandise, regardless of value, which qualifies for entry free of duty under the generalized system of preferences, if the merchandise is imported for noncommercial purposes. Use of Customs form 7523 provides a simpler and more economic and efficient procedure than the existing procedure.

EFFECTIVE DATE: (30 days after publication in the Federal Register.)

FOR FURTHER INFORMATION CONTACT: Drury F. Williford, Inspection and Control Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-5354.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 143.23(d), Customs Regulations (19 CFR 143.23(d)), presently provides that shipments not exceeding $250 in value which are either (1) unconditionally free of duty and not subject to any

quota or internal revenue tax, or (2) conditionally free, and all conditions for free entry are met at the time of entry, may be released upon the filing by the importer of Customs Form 7523, "Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release," in duplicate, supported by evidence of the right to make entry. Under this section and section 10.173(a)(5)(i), Customs Regulations (19 CFR 10.173(a)(5)(i)), merchandise (1) for personal or household use, (2) not intended for resale or imported for the account of others, (3) not in excess of $250 in value, and (4) entitled to entry free of duty under the GSP, may be entered on Customs Form 7523 without a certificate of origin if the certificate is waived by the district director. However, personal or household-use merchandise which qualifies for entry free of duty under the GSP and exceeds $250 in value is entered on Customs Form 5119–A, "Informal Entry," or if authorized by the district director, upon presentation by the importer of a commercial invoice containing a signed declaration that the invoice is correct.

Customs form 7523 may serve as three documents: A manifest, an entry document, and a carrier's certificate and release order. While it must be prepared in duplicate, it may be prepared by the importer and is unnumbered, requiring no formal accountability. On the other hand, Customs form 5119–A serves as an entry document only, is printed in four parts, must be prepared by a Customs inspector, and because it is numbered, requires complete accountability. Further, Customs form 5119–A requires more information to complete and must be reviewed by a supervisory Customs inspector. For these reasons, use of Customs form 7523 provides a simpler and more economical and efficient procedure for the informal entry of GSP merchandise imported for noncommercial purposes. Use of Customs form 7523 in place of Customs form 5119–A would not have any adverse effect on the collection of the revenue or import statistics.

Accordingly, section 143.23, Customs Regulations, is being amended to permit the informal entry on Customs form 7523 of merchandise, regardless of value, which qualifies for entry free of duty under the GSP, if imported for noncommercial purposes.

INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

Because this amendment pertains solely to agency procedure and liberalizes existing requirements, notice and public procedure are unnecessary.

REGULATION DETERMINED TO BE NONSIGNIFICANT

In a directive published in the Federal Register on November 8, 1978 (43 F.R. 52120), implementing Executive Order 12044, "Improving Government Regulations," the Treasury Department stated that it considers each regulation or amendment to an existing regulation published in the Federal Register and codified in the Code of Federal Regulations to be "significant." However, it has been determined that this amendment does not meet the Treasury Department criteria in the directive for a "significant" regulation because it is nonsubstantive, essentially procedural, does not materially change existing or establish new policy, and does not impose substantial additional requirements or costs on, or substantially alter the legal rights or obligations of, those affected.

DRAFTING INFORMATION

The principal author of this document was Laurie Strassberg Amster, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

AMENDMENT TO THE REGULATIONS

Section 143.23, Customs Regulations (19 CFR 143.23), is amended by revising paragraph (d) and adding a new paragraph (g), to read as follows:

PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

143.23 Form of entry

* * * * * * *

(d) Shipments not exceeding $250 in value which are either (1) unconditionally free of duty and not subject to any quota or internal revenue tax, or (2) conditionally free (other than shipments of merchandise provided for in paragraph (g) of this section) and all conditions for free entry are met at the time of entry, which may be released upon the filing by the importer on Customs form 7523, in duplicate, supported by evidence of the right to make entry.

* * * * * * *

(g) Merchandise, regardless of value, which is imported for noncommercial purposes, which qualifies for entry free of duty under the generalized system of preferences (see secs. 10.171–10.178 of this chapter), and for which informal entry may be made on Customs form 7523, in duplicate.

(R.S. 251, as amended, secs. 484, 498, 624, 46 Stat. 722, as amended, 728, as amended, 729 (5 U.S.C. 301, 19 U.S.C. 66, 1484, 1498, 1624).)

R. E. CHASEN,
*Commissioner of Customs.*

Approved: December 10, 1979.
RICHARD J. DAVIS,
*Assistant Secretary of the Treasury.*

[Published in the Federal Register Jan. 4, 1980 (44 F.R. 1012)]

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(T.D. 80-11)

## TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

PART 159—LIQUIDATION OF DUTIES

### Ferroalloys From Spain

Final countervailing duty determination

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Final countervailing duty determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a determination that the Government of Spain has provided benefits which constitute bounties or grants within the meaning of the countervailing duty law on the manufacture, production, or export of ferroalloys. Deposited countervailing duties in the amount of these benefits will be required at the time of entry in addition to duties normally collected on dutiable shipments of the merchandise.

EFFECTIVE DATE: (Jan. 4, 1980.)

FOR FURTHER INFORMATION CONTACT: Leon McNeill, Technical Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-5492.

SUPPLEMENTARY INFORMATION: On August 16, 1979, a notice of "Preliminary Countervailing Duty Determination" was published in the Federal Register (44 F.R. 48022). That notice stated that it had been determined preliminarily that benefits bestowed by the Government of Spain upon the manufacture, production, and/or export of ferroalloys constitute the payment or bestowal of a bounty or grant, directly or indirectly, within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303) (hereinafter the act). The instant determination includes ferroalloys described under the following item numbers of the Tariff Schedules of

the United States Annotated (TSUSA): Ferrochrome (over 3 percent carbon), TSUSA 607.3100; ferromanganese (1 to 4 percent carbon), TSUSA 607.3600; ferromanganese (over 4 percent carbon), TSUSA 607.3700; ferrosilicon manganese, TSUSA 607.5700; and ferrosilicon (60 to 80 percent silicon), TSUSA 607.5100. All of these products are dutiable.

On the basis of an investigation conducted under section 159.47(c) of the Customs Regulations (19 CFR 159.47(c)), and after consideration of comments by the interested parties, it has been determined that certain programs administered or mandated by the Government of Spain constitute the bestowal of bounties or grants within the meaning of the act.

These programs are the following:

(1) *Overrebate, upon exportation, of Spanish indirect taxes under the "Desgravacion Fiscal".*—Tax rebates under this program are to account for the cascade effect of the Spanish indirect tax system. Treasury regards the rebate of indirect taxes on services and inputs not physically incorporated in the final product as countervailable. See 44 F.R. 3476 (January 17, 1979). In this case, the overrebate consists of three elements:

(1) Indirect taxes on services and inputs which are not physically incorporated in the final product. Physical inputs which are considered to be physically incorporated include minerals, ferroalloy briquets, scrap, quartz, and, in the case of ferromanganese with not more than 2 percent carbon, silicomanganese. Each of these inputs provides components which are present in the final product and enhance its value. Physical inputs which do not meet this test are electrode paste which is a catalyst, coal added as a reducing agent, and limestone added as a fluxing agent. Although carbon from the coal is present in the final product, this is incidental to the manufacture of ferroalloys and does not add to their value, and thus has been disallowed;

(2) A credit for a tax on transactions between manufacturers and wholesalers that in this case is not levied on export sales; and

(3) Various "parafiscal" taxes which fail to meet the physical incorporation or direct relationship tests. Each of the taxes in the above categories has been considered countervailable in prior investigations of imports from Spain. The rebate of a tax on export freight and insurance is a rebate upon export of an indirect tax directly related to the product, and, thus, is not countervailable on the basis of *Zenith Radio Corp.* v. *United States*, 437 U.S. 443 (1978).

The "Notice of Preliminary Determination" in the instant case stated that the total amount of taxes rebated on services and inputs which meet the direct relationship or physical incorporation tests was

8.3 percent ad valorem. However, in view of information since received regarding the use of coal and limestone, that total has been reduced to 6.89 percent. In the case of 75 percent ferrosilicon, an allowance would be made for 1 percent of the limestone, which is physically incorporated. However, this is equal to 0.0006 percent of the value of the product, and does not alter the final computation.

The overrebate of taxes under the desgravacion fiscal is 3.11 percent ad valorem; except for ferromanganese containing 2 percent carbon or less, which receives a higher rebate, but also bears a higher burden of allowable taxes, resulting in an overrebate of 2.15 percent ad valorem.

(2) *Regional development incentives.*—The Government of Spain offers several incentives to promote development in the Valle de Cinca and Greater Galician industrial areas. These incentives include: Preferences in obtaining official credit, absent other credit sources; forced expropriation; freedom of amortization over the first 5 years of the life of an installation; and certain tax reductions. Of these programs, no producer of ferroalloys has used official credit. One firm made use of forced expropriation for power transmission lines, but the firm was required to pay the market value of the land so acquired. One firm, S.E. de Carburos Metalicos S.A. (Carburos) made use of the provisions for freedom from amortization. The net benefit to the firm is 0.006 percent ad valorem. With regard to various tax reductions, only one firm, Hidro Nitro Espanolas S.A. (Hidro Nitro), made use of a provision for a reduction by 95 percent of import taxes on machinery and equipment not produced in Spain. The net benefit accruing to Hidro Nitro is 0.005 percent ad valorem. While these benefits would be considered countervailable, the ad valorem benefits accruing to the firms in this case are of amounts which do not alter the calculation of the aggregate net ad valorem benefit. No other regional tax incentive has been used.

(3) *Operating capital loans.*—Ferroalloy producers are eligible to receive preferential operating capital loans in amounts up to 30 percent of the previous year's export sales. The Spanish Government requires commercial banks to reserve a specific proportion of lendable funds for this program. These loans are made for a period of less than 1 year, at a rate of 8 percent plus banking commissions and fees. This is 1.5 percent below the commercially available rate of 9.5 percent plus commissions and fees for loans of less than 1 year, which rate ceiling also is established by law. The weighted average net benefit conferred upon the producers which export ferroalloys to the United States is 0.25 percent ad valorem.

Programs determined not to constitute bounties or grants within the meaning of the act include:

(1) Tax-free export investment reserve.
(2) Construction loans.
(3) Short-term prefinancing loans.
(4) Loans on deferred payments.
(5) Commercial services loans.
(6) Foreign buyers loans.

None of these programs has been used by exporters of ferroalloys. Also determined not to constitute a bounty or grant within the meaning of the act is the "exporter's card." This card provides the holder with increased access to funds under the operating capital loans program. However, any benefit is realized through the interest rate differential. In the absence of such a loan, no benefit is conferred upon the cardholder.

After consideration of the available information and comments by the interested parties, it is hereby determined that exports of ferroalloys from Spain benefit from bounties or grants within the meaning of section 303, Tariff Act of 1930, as amended. The amounts of overrebate under the desgravacion fiscal have been determined in accordance with the "Notice of Revised Method for Calculation of Bounty or Grant with Regard to Certain Indirect Taxes," published in the Federal Register on January 17, 1979 (44 F.R. 3476).

Accordingly, notice is hereby given that ferroalloys entering under item Nos. 607.3100, 607.3600, 607.3700, 607.5700, and 607.5100, TSUSA, which are imported directly or indirectly from Spain, if entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register will be subject to the payment of countervailing duties equal to the net amount of the bounties or grants determined or estimated to have been bestowed.

In accordance with section 303 of the act and until further notice, the net amount of such bounties or grants has been ascertained and determined to be 3.36 percent of the f.o.b. value of the ferroalloys entering under item Nos. 607.3100, 607.3700, 607.5700, and 607.5100, TSUSA. The net amount of bounties or grants bestowed upon ferromanganese containing not more than 2 percent carbon entering under item No. 607.3600, TSUSA, has been ascertained and determined to be 2.40 percent ad valorem. Ferromanganese containing more than 2 percent carbon, entering under this item number receives bounties or grants which have been ascertained and determined to be 3.36 percent of the f.o.b. price. All ferromanganese from Spain entering under this

307-464—80——2

item number shall be subject to payment of a countervailing duty of this higher amount, unless satisfactory documentation is presented at the time of entry, or withdrawal from warehouse, for consumption which shows that the merchandise contains not more than 2 percent carbon. This documentation should include an analysis by the producer stating the carbon content, and must be confirmed by an analysis by the U.S. Customs Service at the port of entry. Merchandise which satisfies this requirement shall be subject to the payment of a countervailing duty equal to the lower rate of 2.40 percent of the f.o.b. price.

Effective on or after the date of publication of this notice, and until further notice, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amounts ascertained in accordance with the above declaration upon the entry, or withdrawal from warehouse, for consumption of ferroalloys described in this notice imported directly or indirectly from Spain, which benefit from these bounties or grants. To the extent that it can be established to the satisfaction of the Commissioner of Customs that imports of one or more of these ferroalloys are benefiting from a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production, or exportation of ferroalloys from Spain described above.

The table in section 159.47(f), Customs Regulations (19 CFR 159.47(f)), is amended by inserting after the last entry for "Spain" the word "ferroalloys" in the column headed "Commodity," the number of this Treasury decision in the column headed "Treasury decision," and the words "Bounty declared-rate" in the column headed "Action."

(R.S. 251 as amended, secs. 303, as amended, 624, 46 Stat. 687, as amended, 759 (19 U.S.C. 66, 1303, 1623).)

This final determination is published pursuant to section 303(a), Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order No. 101–5, May 16, 1979, the provisions of Treasury Department Order No. 165, revised, November 2, 1954, and section 154.47, Customs Regulations (19 CFR 154.47), insofar as they

pertain to the issuance of a final countervailing duty determination by the Commissioner of Customs, are hereby waived.

Dated: December 26, 1979.

ROBERT H. MUNDHEIM,
*General Counsel of the Treasury.*

[Published in the Federal Register, Jan. 2, 1980 (45 F.R. 25)]

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## (T.D. 80–12)

## Water-Circulating Pumps From the United Kingdom

**Notice of modification or revocation of dumping finding**

AGENCY: U.S. Treasury Department.

ACTION: Revocation of dumping finding.

SUMMARY: This notice is to advise the public that water-circulating pumps from the United Kingdom are no longer being sold to the United States at less than fair value under the Antidumping Act of 1921. Additionally, the sole United Kingdom manufacturer has given assurances that it is not now selling nor does it intend to sell water-circulating pumps to the United States at less than fair value. This notice revokes the finding of dumping with respect to water-circulating pumps from the United Kingdom (T.D. 76–190). As a result, shipments of water-circulating pumps from the United Kingdom which were entered, or withdrawn from warehouse, for consumption on or after October 15, 1979, will not be liable for dumping duties.

EFFECTIVE DATE: (Date of publication in the Federal Register.)

FOR FURTHER INFORMATION CONTACT: Susan Crawford, Trade Analysis Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; telephone 202–566–5492.

SUPPLEMENTARY INFORMATION: On July 7, 1976, a finding of dumping with respect to water-circulating pumps from the United Kingdom was published in the Federal Register as T.D. 76–190 (41 F.R. 27843). A "Notice of Tentative Determination to Modify or Revoke Dumping Finding" with respect to this merchandise from the United Kingdom was published in the Federal Register on October 15, 1979 (44 F.R. 59312).

Reasons for the tentative determination were published in the above-mentioned notice and interested persons were afforded an

opportunity to provide written submissions or request an opportunity to present oral views in connection therewith.

No written submissions or requests having been received, I hereby determine that, for the reasons stated in the "Notice of Tentative Determination to Modify or Revoke Dumping Finding," water-circulating pumps from the United Kingdom are not being, nor are likely to be sold at less than fair value, and T.D. 76–190 is hereby revoked.

Accordingly, section 153.46 of the Customs Regulations (19 CFR 153.46) is hereby amended by deleting from the column headed "Merchandise" the words "water-circulating pumps, wet motor type," and from the column headed "country," the words "United Kingdom," and from the column headed "Treasury decision," reference to T.D. 76–190.

This notice is published pursuant to section 153.44(d) of the Customs Regulations (19 CFR 153.44(d)). (Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173.)

Dated: December 28, 1979.

ROBERT H. MUNDHEIM,
*General Counsel of the Treasury.*

[Published in the Federal Register, Jan. 4, 1980 (45 F.R. 1013)]

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(T.D. 80–13)

## TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

PART 159—LIQUIDATION OF DUTIES

## Non-rubber Footwear, Certain Castor Oil Products, Scissors and Shears, and Cotton Yarn From Brazil

Declaration of net amount of bounty or grant and suspension of liquidation

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Net amount of bounty or grant declared and suspension of liquidation.

SUMMARY: This notice is to advise the public of new rates of countervailing duty applicable to imports of nonrubber footwear, certain castor oil products, scissors and shears, and cotton yarn from Brazil. Liquidation of entries of this merchandise will be suspended

pending receipt of updated information on remaining bounties or grants and estimated countervailing duties will be collected.

EFFECTIVE DATE: Exports on or after December 7, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Charles F. Goldsmith, economist, Office of Tariff Affairs, U.S. Department of the Treasury, 15th Street and Pennsylvania Avenue NW., Washington, D.C. 20220; telephone 202–566–2951.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 17, 1979 (44 F.R. 28790–92), it was announced that due to actions taken by the Government of Brazil to eliminate export payments which have been determined by Treasury to constitute bounties or grants, reductions of countervailing duty rates applicable to imports of nonrubber footwear, certain castor oil products, scissors and shears, and cotton yarn, would be made quarterly to reflect the staged reduction of these benefits. However, on December 7, 1979, the Government of Brazil announced that the export payments, which were in the form of IPI credits, would be eliminated immediately instead of over a 4-year period as had been previously declared. Accordingly, this notice adjusts the countervailing duty rates on the subject merchandise to take into account the immediate elimination of the IPI credits.

The countervailing duty rates declared in this notice reflect other programs, such as preferential financing, which were originally found in each of the cases to have conferred a bounty or grant. Pending receipt of updated information regarding the utilization of the other programs, liquidation of entries of the subject merchandise will be suspended and estimated countervailing duties will be collected.

Accordingly, notice is hereby given that dutiable, nonrubber footwear, certain castor oil products, scissors and shears, and cotton yarn, imported directly or indirectly from Brazil, and exported from that country on or after December 7, 1979, which benefit from bounties or grants, shall be subject, in addition to any other duties determined or estimated to be due, to payment of countervailing duties equal to the net amount of any bounty or grant ascertained and determined or estimated to have been paid or bestowed, if entered, or withdrawn from warehouse, for consumption after the date of publication of this notice in the Federal Register.

In accordance with section 303 of the act, and until further notice, the net amount of such bounties or grants has been estimated and declared to be:

(1) Nonrubber footwear, 1 percent;

(2) Certain castor oil products, 1 percent;

(3) Scissors and shears, 2.5 percent;

(4) Cotton yarn, 2.5 percent.

All of the above are expressed in terms of the f.o.b. or exworks price to the United States of the applicable merchandise.

The liquidation of all entries, or withdrawals from warehouse, for consumption of nonrubber footwear, certain castor oil products, scissors and shears, and cotton yarn, imported directly or indirectly from Brazil, which benefit from such bounties or grants, shall be suspended effective as of the date this notice is published in the Federal Register. A deposit of the estimated countervailing duty shall be required at the time of entry, or withdrawal from warehouse, for consumption.

Effective on the date of publication of this notice in the Federal Register and until further notice, upon the entry, or withdrawal from warehouse, for consumption of this merchandise, imported directly or indirectly from Brazil, which benefits from these bounties or grants, there shall be deposited, in addition to any other duties estimated or determined to be due, countervailing duties in the amount estimated in accordance with the above declaration. To the extent that it can be established to the satisfaction of the Commissioner of Customs that imports of the merchandise covered by this determination are benefiting from a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be deposited.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production, or exportation of nonrubber footwear, certain castor oil products, scissors and shears, and cotton yarn from Brazil.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for "nonrubber footwear," "certain castor oil products," "scissors and shears," and "cotton yarn," respectively, under the country heading "Brazil," the number of this Treasury Decision in the column so headed and the words "New rate" in the column headed "Action."

(R.S. 251, sec. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2049; 19 U.S.C. 66, 1303, as amended, 1624.)

Dated December 28, 1979.

ROBERT H. MUNDHEIM,
*General Counsel of the Treasury.*

[Published in the Federal Register, Jan. 4, 1980 (45 F.R. 1013)]

# Decisions of the United States Customs Court



## *Customs Decisions*

(C.D. 4832)

EDGE IMPORT CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 75-8-02155

*Hunting Knives—Knives With Stag Handles—Knives With Wood Handles—Other*

Imported knives with metal pommels and metal guards containing stag horn or wood in their handles which were classified by Customs as knives, other; other, under TSUS item 650.21, as modified by T.D. 68-9, were claimed by plaintiff to be properly classifiable as knives with stag horn or wood in their handles under TSUS item 650.13 or 650.19, respectively, as modified. HELD, properly

classified by Customs as knives, other; other, under item 650.21, as modified.

CLASSIFICATION—HUNTING KNIVES WITH METAL POMMELS AND METAL GUARDS

Knives with metal pommels and metal guards may not be classified as knives with wood or stag handles because of their metal elements.

CLASSIFICATION—TRADE MEANING

Even assuming imported merchandise is known in the trade as wood-handled or stag-handled knives, this is not necessarily determinative of its classification. *United States* v. *Ignaz Strauss & Co., Inc.*, 37 CCPA 32, 35, C.A.D. 415 (1949). *See also Hancock Gross, Inc.* v. *United States*, 73 Cust. Ct. 72, C.D. 4555, 383 F. Supp. 832 (1974), *aff'd*, 62 CCPA 100, C.A.D. 1153, 517 F. 2d 951 (1975).

EVIDENCE—BURDEN OF PROOF

Plaintiffs in this court bear a burden of proof to demonstrate the incorrectness of the Customs Service's classification and to establish the propriety of their asserted classification, whether primary or alternative. *United States* v. *New York Merchandise Co., Inc.*, 58 CCPA 53, C.A.D. 1004, 435 F. 2d 1315 (1970). Plaintiff has failed to meet that burden here.

[Judgment for defendant.]

(Decided December 17, 1979)

*Greenwald, Kovner & Goldsmith* (*Frank J. Hariton* at the trial; *Leo Goldsmith, Jr.*, on the briefs) for the plaintiff.

*Alice Daniel*, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation (*Susan Handler-Menahem* at the trial and on the brief), for the defendant.

LANDIS, Judge: This case involves the importation of hunting knives exported from Germany and entered at New York in 1973 and 1974. The prior opinion of this court, C.R.D. 79–7, denying defendant's motion to strike portions of plaintiff's brief, appears in 82 Cust. Ct. ——.

The Customs Service heretofore classified the imported knives under TSUS item 650.21, as modified by T.D. 68–9, and assessed duty thereon at the rate of 0.5 cent each plus 8.5 per centum ad valorem. Plaintiff in its complaint claims that those knives which contain stag horn in their handles are properly classifiable under TSUS item 650.13, as modified by T.D. 68–9, and dutiable at the rate of 2 cents each plus 6 per centum ad valorem. Plaintiff further claims that those knives which contain wood in their handles are properly classifiable under TSUS item 650.19, as modified by T.D. 68–9, and dutiable at the rate

of 1 cent each plus 6 per centum ad valorem. Finally, plaintiff alternatively claims that prior Customs practice requires a result in its favor.

For the reasons stated below, it is the determination of the court that the classification relied upon by the defendant shall prevail.

The pertinent provisions of the tariff schedules, as modified by T.D. 68–9, are as follows:

SCHEDULE 6. – METALS AND METAL PRODUCTS

PART 3. – METAL PRODUCTS

* * * * * * *

Subpart E. – Tools, Cutlery, Forks and Spoons

* * * * * * *

| | | |
|---|---|---|
| | Knives not specifically provided for elsewhere in this subpart, and cleavers, with or without their handles: | |
| | * * * * * * * | |
| | Knives with their handles: | |
| | * * * * * * * | |
| 650.13 | With animal horn, bone, ivory, mother-of-pearl, or shell handles | 2¢ each + 6% ad val. |
| | * * * * * * * | |
| | Other: | |
| 650.19 | Hunting knives with wood handles | 1¢ each + 6% ad val. |
| 650.21 | Other | 0.5¢ each + 8.5% ad val. |

In this case there is the question of whether a knife, containing a *metal* guard and *metal* pommel may be classified as a stag-handled knife or a wood-handled knife. This raises the issue of whether a guard and pommel are part of the handle of a knife. (The guard of a knife is that horizontal piece which separates the blade from the remainder of the handle. The pommel is at the very end of the knife. The guard is largely a safety feature while the pommel has esthetic value and also occasionally holds the knife together.) A subsidiary question plaintiff has made reference to is whether prior classification by the Customs Service bars the classification made herein.

Two witnesses were offered by plaintiff and one by defendant. Plaintiff's witnesses, however, were ineffective and not particularly persuasive.

Plaintiff's first witness was Mr. Tom Palmer, who for 7 years was vice president of Gutman Cutlery Co. (the parent of plaintiff). He was involved in sales and purchasing for the company with "special emphasis on product design" (r. 4).

Mr. Palmer stated he agreed with Webster's Seventh New Collegiate Dictionary's definition of handle—"a part that is designed to be grasped by the hand" (r. 8). Mr. Palmer further stated, in the major portion of his testimony, that in the knife trade the exhibits in the case would be known as stag-handled or wood-handled knives. (See, e.g., r. 7, 23.) This was because the portion that was held was either wood or stag. However, on cross-examination, counsel for the defendant brought out that Palmer, while demonstrating how a knife is held, also had his hand, more particularly his thumb, wrapped around the metal guard as well (r. 49–50). Thus the guard would appear to be a segment of the handle. Nevertheless, Palmer stated that manufacturers, distributors, and consumer referred to the importations as stag-handled or wood-handled knives. This opinion was largely endorsed by numerous knife catalogs introduced by the plaintiff. However, even if the imported merchandise is known in the trade as wood-handled or stag-handled knives, this is not necessarily determinative of its tariff classification. *United States* v. *Ignaz Strauss & Co., Inc.*, 37 CCPA 32, 35, C.A.D. 415 (1949). *See also Hancock Gross, Inc.* v. *United States*, 73 Cust. Ct. 72, C.D. 4555, 383 F. Supp. 832 (1974), *aff'd*, 62 CCPA 100, C.A.D. 1153, 517 F. 2d 951 (1975).

Plaintiff's second witness was Mr. Ivan Szanto, the general manager of Gutman Cutlery (parent of plaintiff). Mr. Szanto testified that while he could imagine a knife with no metal whatsoever from the end of the blade to the end of the knife, such a knife would not be a quality knife (r. 65). Furthermore, he never saw a guard made out of wood, although he conceded that such a construction may not be impossible (r. 66). Finally, "the pommel is always made out of metal" (r. 67). On cross-examination though, Mr. Szanto identified high-quality knives, marked hunting knives (catalog, exhibit A), which contain wood in their handles and have no guards or pommels of metal. In another catalog exhibit (exhibit C, Gutman's own cutlery) proffered by the defendant, the witness, however, identified a knife with a stag handle which has no metal guard or pommel (r. 79). Thus, such a knife is clearly possible.

Apparently in an effort to introduce a de minimis argument, i.e., that the metal in a knife pommel and guard is de minimis when compared to the handle as a whole, Szanto testified that the guard is never more than 3 percent of the value of the knife (r. 77). Yet doubt was cast on this figure on cross-examination (r. 80).

It should be noted that nowhere in the record are any of the exhibits identified as being the same as the imported merchandise. This should have been done by plaintiff, if that is true.

The defendant's witness was Mr. R. N. Farquharson, executive vice president and chief operations officer of Case Cutlery Co. Case Cutlery manufactures pocketknives, hunting knives, scissors, and shears, and markets them around the world (r. 84). The company also has prepared knives for the military, and for the space program, (r. 85). The company has been making knives since 1947 (r. 91). Mr. Farquharson has been with Case since 1955 (r. 84). As executive vice president and chief operations officer, since 1973, Mr. Farquharson has been in charge of all the operations of the company (r. 85). Mr. Farquharson at the time of trial was president emeritus of the American Cutlery Manufacturers Association after having served 2 years as president. He has been quoted in books and articles on knives and through the years has frequently attended trade shows (r. 86).

According to this experienced witness, "[a] knife is made of two major parts, the blade and the handle. The handle is composed of an assembly, normally, of three parts: The cover material, the guard, and the bolster" (r. 87). He stated: "It's not a knife without a handle and without a blade" (r. 88). Some more of his testimony is worthwhile excerpting here:

> Q. What is the purpose of the guard?—A. It's a safety feature. As you have heard testimony earlier today, to guard the individual's hand from slipping over the cutting edge.
>
> Q. Why does a guard become necessary in a hunting knife?—A. From a safety feature, it protects the user from hurting himself.
>
> Q. Why is there more of a likelihood in a hunting knife that a person's hand would slip?—A. Well, you are gutting an animal. Your hand gets slippery and moist and you might not be able to hold the knife firmly enough, and one puts on guards to keep your hand from sliding forward, and a guard on the end of the knife to keep it from sliding off.
>
> Q. And both the back pommel and the guard serve to protect the hand?—A. Yes, that's why it's shaped that way (r. 88–89).

In other knives, where the handles are made by using washers, the pommel locks the washers in place. "(The pommel) is used to keep the whole handle tgether" (r. 89).

The defendant's position in this case is that since these elements of the handle, the guard and the pommel, are made of metal, one may not refer to the completed object as a stag-handled or wood-handled knife since important segments of them are made of metal. One of plaintiff's counterarguments is that the TSUS provision for stag-handled or wood-handled knives, under such an understanding as outlined above, would be devoid of meaning since there never

would be such an item as a completely stag-handled or wood-handled knife. Yet Mr. Farquharson's testimony belies this argument:

> Q. Was there a time historically when guards and pommels were all made from the covering material?—A. Oh, yes. They still are in some instances (r. 90).

This is even supported by one of plaintiff's witnesses. See testimony under cross-examination at pages 78–79 of the record.

The critical point of Farquharson's testimony therefore is that a knife consisting of a metal guard and pommel cannot be classified as a stag-handled or wood-handled knife even though the knife's covering is made of those materials. That is the holding of this case.

On cross-examination, Farquharson was forced to admit, repeatedly, that various catalogs identified such knives as leather-handled knives, or stag-handled knives, despite the presence of metal guards and pommels. He was able to extricate himself, on redirect examination, by pointing out that these knives were categorized according to their cover material, for ease in marketing. This was persuasive. Plaintiff's witnesses were not as effective nor as persuasive.

The case most closely on point is *United States* v. *Charberjoy Distributors, Inc.*, 59 CCPA 207, C.A.D. 1068, 465 F. 2d 922 (1972), which involved the importation of table knives from Japan. The handles of the merchandise were composed of stainless steel and plastic. The knives were classified as knives "with stainless steel handles" under TSUS item 927.53. Yet the court held that since the knife handles were composed of stainless steel and plastic, the proper classification was under TSUS item 650.21, for "other" knives.

The Court of Customs and Patent Appeals approvingly cited the Customs Court:

> With respect to identity of merchandise covered by item 927.53 classification, the evidence in this record clearly shows that the imported knives possess handles which are composed in substantial part of a nonmetallic material, a plastic. Item 927.53, the temporary provision, and items 650.09 and 650.11, the permanent provisions to which item 927.53 refers, all contain the qualifying phrase "with stainless steel handles." This latter phrase we think is incompatible with a description of a knife "with stainless steel and plastic handle"—the characterization most accurately identifying the knife handles at bar, according to the evidence. And we find nothing in the tariff schedules themselves or in the Tariff Classification Study notes (footnote omitted) which indicates that the language "with stainless steel handles" is to be given any construction other than a literal one. In fact, the juxtaposition of the language "with stainless steel handles" in part 3E of schedule 6 of the tariff schedules with coordinate provisions for knives with handles composed of other, specifically designated

> materials, indicates to the contrary. Thus, under the inferior heading "knives with their handles" there are five subdivisions of knives with handles, grouped according to the specific material of which the handle is composed, followed by a sixth or residual grouping designated only as "other." Such arrangement indicates, in our opinion, that Congress intended to classify "knives with their handles" according to the single, specific material of which the handles were composed, or if not so made, then under a residual category. (59 CCPA, pp. 210–211.)

The Court of Customs and Patent Appeals added:

> * * * Considering the phrase "a stainless steel handle" in the context of common, everyday speech, we think that a person hearing the phrase would take it to mean that the handle is composed solely of the named material except, perhaps, for insignificant or negligible quantities of other materials, and would not expect to find substantial portions of other materials. The interpretations proposed by the Government, "in chief value of" and "predominantly," admit of significant amounts of other materials and do not comport with what we agree with the Customs Court to be a "literal construction" of the phrase. * * * (59 CCPA, p. 211.)

Applying the same analysis, the knives here may not be classified as knives with stag or wood handles because of the presence of the metal pommel and guard.

A second case which supports the defendant's classification is *National Carloading Corp.* v. *United States*, 46 Cust. Ct. 1, C.D. 2224 (1961), *aff'd on rehearing*, 54 Cust. Ct. 178, C.D. 2529 (1965). According to the court, "the sole question presented for our determination is whether the length of the knives, exclusive of the handles, is under 4 inches." 46 Cust. Ct., page 2. This, in turn, raised the question of whether the knives' bolsters or guards were part of their handles.

In *National Carloading*, reliance was placed on an expert who testified: "The design of this handle ends in what we call in our trade, a bolster." He also stated that where "the blade portion ends, that is where the handle starts." Id., page 3. In addition, the court relied upon three different dictionary definitions. Judge Lawrence concluded for the court: "These definitions clearly indicate that a blade is the cutting portion of a knife, the other portion being described as the handle." Id., page 4.

Finally, plaintiff claims in the alternative that prior Customs practice existed which classified knives, such as those imported here, as wood-handled or stag-handled knives. This assertion in plaintiff's brief is offered without any support. No evidence was introduced at the trial as to earlier Customs practice. *Ditbro Pearl Co., Inc.* v. *United States*, 72 Cust. Ct. 1, 8, C.D. 4497, 393 F. Supp. 1398 (1974),

*aff'd*, 62 CCPA 95, C.A.D. 1152, 515 F. 2d 1157 (1975). All that exists in the record is some unsupported comments by plaintiff's counsel. Such opinions are not evidence. *Tropi-Cal* v. *United States*, 63 Cust. Ct. 518, C.D. 3945 (1969). In any case, there has been no showing of an established uniform practice within the meaning of 19 U.S.C. 1315(d).

Plaintiffs in this court bear a burden of proof to demonstrate the incorrectness of the Customs Service's classification and to establish the propriety of their asserted classification, whether primary or alternative. *United States* v. *New York Merchandise Co., Inc.*, 58 CCPA 53, C.A.D. 1004, 435 F. 2d 1315 (1970). Plaintiff has failed to meet that burden here.

Action dismissed. Judgment will be entered accordingly.

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(C.D. 4833)

LOFFREDO BROS., INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

*On Plaintiff's Motion and Defendant's Cross-Motion for Summary Judgment*

Court No. 76-8-01789

[Plaintiff's motion denied; defendant's cross-motion granted.]

(Dated December 18, 1979)

*Barnes, Richardson & Colburn* (*Jacqueline Nolan-Haley* on the briefs) for the plaintiff.

*Alice Daniel*, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation (*Susan C. Cassell* on the brief), for the defendant.

MALETZ, Judge: This case which comes before the court on cross-motions for summary judgment involves the proper tariff classification of Communion pins imported from Italy in 1974 via the Port of New York. The pins were classified by the Government under item 740.38 of the Tariff Schedules of the United States, as modified by T.D. 68-9, as other jewelry and other objects of personal adornment valued over 20 cents per dozen pieces or parts and assessed duty at the rate of 27.5 percent ad valorem. Plaintiff claims that the pins are properly dutiable at the rate of 10 percent ad valorem under item 740.60, as modified by T.D. 68-9, as other religious articles of a purely devotional character designed to be worn on apparel or carried on or about or attached to the person.

*The Statutes*

The statutes involved are contained in schedule 7, part 6, subpart A of the tariff schedules. They are as follows:

*Subpart A headnotes:*

* * * * * * *

2. For the purposes of this subpart—
   (a) the term "jewelry and other objects of personal adornment" * * * does not include—

* * * * * * *

   (ii) religious articles of a purely devotional character * * *

*Classified under:*

Jewelry and other objects of personal adornment not provided for in the foregoing provisions of this part (except articles excluded by headnote 3 of this part), and parts thereof:

* * * * * * *

Valued over 20 cents per dozen pieces or parts:

* * * * * * *

| | | |
|---|---|---|
| 740.38 | Other | 27.5% ad val. |

*Claimed under:*

Religious articles of a purely devotional character designed to be worn on apparel or carried on or about or attached to the person:

* * * * * * *

Crucifixes and medals:

* * * * * * *

| | | |
|---|---|---|
| 740.60 | Other | 10% ad val. |

At the outset, the parties agree that no material issue of fact exists which need be resolved by trial. Instead, the parties agree that the case may be determined on the basis of the record before the court.

Against this background, plaintiff in support of its motion for summary judgment has submitted the affidavit of Frank Loffredo, the president of the plaintiff-importer, Loffredo Bros., Inc.; the affidavit of Msgr. Harry J. Byrne, pastor of St. Joseph's Church in New York City, N.Y.; copies of several pages from catalogs of companies selling religious articles; and representative samples of the imported merchandise.

Defendant in support of its cross-motion for summary judgment has submitted the affidavit of Father James O'Connor, a Roman

Catholic priest who is professor of dogmatic theology at St. Joseph's Seminary in Yonkers, N.Y., and the deposition of Msgr. Harry J. Byrne, whose affidavit, as previously indicated, was submitted by plaintiff.

Considering first the imported merchandise, it consists of two golden-colored Communion pins: Style No. 671 (pin No. 1) which is one-half inch long; and style No. 672 (pin No. 2) which is 1 inch long. These pins are described by Msgr. Byrne in his deposition as follows (pp. 9–11):

> The pin marked No. 1 represents a chalice, which is an article that is used in the Mass, the chief service in the Catholic Church, and from the top of the chalice is a round semicircle, which is obviously representing the Host, which is received in the Mass and in Holy Communion.
>
> The part that represents the Host has the letters IHS on it. These are representations of three Greek letters that indicate the name of Jesus.
>
> There's also another symbolism in these initials from the Latin and they refer to the phrase "in hoc signum," meaning "in this sign."
>
> It appears frequently on a cross or on vestments that are used at the Mass and it refers to the cross as a sign of Christian belief, and in this case, the Host, the Communion Host, is a sign of Christian belief.
>
> * * * * * * *
>
> The pin marked No. 2 is very similar to the first pin that I described. The pin marked No. 2 is also representative of a chalice, the article used in the Mass, and above the chalice appears a circle, which obviously represents the Host received in the Mass and received at Communion.
>
> At the base of the chalice is the word "sanctus," which is the Latin for "holy." Above that word is a cross.
>
> On the upper part of the chalice, there is a representation of an angel. On the part representing the Host, there is also a cross.

With regard to these imported Communion pins, it is undisputed:

1. That plaintiff sells the imported pins only to religious article stores.

2. That the pins are advertised only in religious article catalogs and only in connection with the celebration of First Holy Communion.

3. That the pins symbolize the Holy Eucharist, one of the seven sacraments of the Roman Catholic Church.

4. That the pins are given to children on the occasion of their First Holy Communion.

5. That the First Holy Communion is given to a child who has reached a level of religious maturity so that he can henceforth receive the Sacrament of the Holy Eucharist.

In this setting, the single issue is whether the imported Communion pins are "purely devotional" within the meaning of item 740.60.

On this issue we have the affidavit (presented by plaintiff) and the deposition (taken by the defendant) of Monsignor Byrne who was ordained as a Roman Catholic priest 33 years ago and is presently pastor of St. Joseph's Church in New York. He has been a monsignor—a title of honor signifying membership in the papal household—for the past 17 years. Monsignor Byrne attended Cathedral College, St. Joseph's Seminary in Yonkers and Catholic University of America, from which school he holds a doctorate in canon law. He has also held administrative positions in the New York Archdiocese.

In his affidavit, Monsignor Byrne stated that the pins have special religious significance, representing the Holy Eucharist; that their purpose is to excite pious devotion; and that they are worn as acts of devotion. Further, Monsignor Byrne testified in the course of his deposition that he considered the Communion pins to be purely devotional because they would not be worn on an occasion that was not associated in some way to the reception of the First Holy Communion. He added that a child would be inclined to wear a Communion pin to church on Sunday or when going to school for a period of a few months after receiving First Holy Communion.

With respect to the use of the Communion pins, Monsignor Byrne testified as follows (dep. pp. 13–14):

> *Q.* After the Communion ceremony, are you familiar with what happens to the pins after this particular ceremony? How they are used, if they are used?
>
> A. Yes. These pins would be worn by the children for a period of time, maybe some months after the ceremony, and then they would generally be kept with the family heirlooms. A certificate indicating that the child had received First Holy Communion on such and such a date, perhaps the armband, the ribbon that they wear on the occasion, and generally that kind of a pin would be kept by a family in a box with sort of their memorabilia from childhood.
>
> I might also add that sometimes decorative certificates are given which the families frequently frame and place in the child's room or somewhere in the house and frequently the pin will be attached to that decorative certificate.
>
> *Q.* Would you agree that these pins are commemorative in nature, to commemorate the date or the time that the child made their First Holy Communion?
>
> A. Yes, I would agree that the pins are commemorative in nature.
>
> I would add that they are more than that, in that they are a religious article that tends to inspire devotion or prayer on the part of the child who receives it.

*Q.* Might they also be more than a religious article in that they tend to, as well as inspiring devotion, commemorate the happening of a particularly significant event?
A. Yes.

Further, Monsignor Byrne testified that in his opinion the imported Communion pins were "purely devotional" (dep. p. 20) within the following definition of that term (dep. p. 36):

> I think something would be purely devotional that would have a primary quality of religious significance.
> It would be something that would move a believer to prayer, to meditative reflection on the mysteries of life, of creation, of where we're going, the religious dimensions of our lives.
> It would be something that would be used primarily on religious occasions.

Defendant, in addition, submitted the affidavit of Father James O'Connor, a Roman Catholic priest for the past 13 years. Father O'Connor was a parish priest at a church in the Bronx, N.Y., from 1966 to 1969. In 1969, he went to Rome where he received a degree as doctor of theology from the University of St. Thomas in 1972. For the past 8 years, Father O'Connor has been professor of dogmatic theology at St. Joseph's Seminary in Yonkers, N.Y.

In his affidavit, Father O'Connor, after indicating that he had examined the Communion pins in question, then stated:

> 6. I am very familiar with pins of this nature and know that they are given to children on the occasion of their first Holy Communion, to be worn on the clothing.
> 7. It is my opinion that although Communion pins possess a certain religious significance, they are not of a purely devotional nature, that is, they are not used solely to connote pious thoughts and aspirations and to excite one's thoughts to heavenly things.
> 8. These Communion pins are unlike rosary beads and religious medals which are purely and directly devotional.
> 9. The primary purpose of the first Communion pins is to commemorate the occasion of the child's first Holy Communion and to symbolize that the child has reached a certain level of religious maturity and can henceforth receive the Sacrament of the Eucharist.

The record is thus clear that the Communion pins have both a religious and commemorative significance. Beyond that, Monsignor Byrne was of the opinion that their religious significance is primary (dep. p. 22), while Father O'Connor was of the opinion that their primary purpose is commemorative (aff. p. 2, par. 9). In light of these considerations, we must determine whether the imported Communion pins are of a "purely devotional nature" within the meaning of item 740.60.

The question of what constitutes an article of purely devotional character was considered in *Panation Trade Co.* v. *United States*, 62 Cust. Ct. 464, C.D. 3802, 298 F. Supp. 752 (1969). There, a medal symbolically depicting the Holy Trinity on one side and the risen Christ on the other side, was held to be a religious article of a purely devotional character under the provisions of item 740.60. In reaching that conclusion, the court noted that the term devotional "is a 'religious * * * word used to connote pious thoughts and aspirations' and to excite one's thoughts to heavenly things." As relevant in this regard, the court cited the following dictionary definitions of the words "purely" and "devotional" (62 Cust. Ct. at 469):

> *Funk & Wagnalls New "Standard" Dictionary of the English Language* (1956)—
>
> *purely* adv. 1. In a pure manner. * * * (2) Completely; totally; absolutely * * *.
>
> *devotional* a. Of or pertaining to devotion; of the nature of or expressing devotion; devout.
>
> *devotional* n. 1. The state of being devoted. (1) Zealous application to any pursuit or practise, especially to religious duties; devoutness. (2) Strong attachment expressing itself in earnest service; ardor; zeal. * * * 2. An expression or act of devotedness or devoutness; especially an act of religious worship * * *.
>
> *Webster's Third New International Dictionary of the English Language* (1963)—
>
> *purely* adv: without admixture—usually used in combination with an adjective * * *.
>
> *devotional* adj: relating to, suited to, used in, or characterized by devotion (as religious devotion) * * *.

The court in *Panation* further noted that whether an article is one of religious devotion is determined largely by its nature and the subject with which it deals. 62 Cust. Ct. at 470. Tested by this standard, it must be concluded that although the subject matter of the Communion pins here involved has religious significance, the undisputed facts demonstrate that their nature and use are not purely devotional within the meaning of item 740.60.

On the contrary, it appears clear that the Communion pins at bar are commemorative in nature much in the manner of a graduation pin or ring. Thus, according to Monsignor Byrne's deposition, the pins are worn for a short period of time either to church or to school and then are usually put away in a box with other memorabilia from childhood such as the ribbon, armband, or stole worn on the occasion. Significant in this respect is the fact that sometimes the pins are

attached to the decorative certificates issued to commemorate the First Holy Communion which are framed and displayed in the house. The short of the matter is that the pins are not of a purely devotional character but rather are "really a memento of the religious event." See Monsignor Byrne deposition page 30.

In view of all the foregoing, the court holds that the plaintiff has failed to sustain its burden of establishing that the imported Communion pins are of a "purely devotional character" within the meaning of item 740.60. Accordingly, plaintiff's motion for summary judgment is denied; defendant's cross-motion for summary judgment is granted; and the action is hereby dismissed.

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(C.D. 4834)

LABAY INTERNATIONAL, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 76-11-02561

[Judgment for defendant.]

(Decided December 21, 1979)

*Givens & Deem* (*Robert T. Givens* on the briefs) for the plaintiff.

*Alice Daniel*, Acting Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation (*Susan Handler-Menahem* on the brief), for the defendant.

MALETZ, Judge: The only issue in this case—which has been submitted on a stipulation of facts—is whether the court has jurisdiction. Two questions are presented in this connection: (1) Whether a valid protest was filed within the 90-day period required by 19 U.S.C. 1514(b)(2); and (2) in the event a valid protest was filed within this time period, whether the action was commenced in this court within 180 days after notice of denial of such protest, as required by 28 U.S.C. 2631(a).

The case arises as follows: In April 1972, the merchandise here involved—consisting of drill pipe and equipment—was exported from Houston, Tex., to the Ivory Coast, West Africa. Thereafter, in November 1973, the merchandise was entered back into Houston without advancement in value or improvement in condition by any process of manufacture or other means while abroad. Accordingly, plaintiff claimed duty-free treatment for the merchandise under item 800.00 of the tariff schedules as American goods returned. The

claim, however, was rejected by Customs because the necessary documentation was lacking. In that circumstance, the merchandise was liquidated on October 18, 1974, under item 610.52 as iron pipe and assessed duty at the rate of 13 percent ad valorem.

On December 4, 1974, plaintiff sent a letter to the district director of Customs at Houston requesting reliquidation of the merchandise pursuant to section 520(c)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)).[1] This letter read as follows:

> C.E. 03673 of November 28, 1973; Liquidated October 18, 1974; Intairdril Co.; Customs bill number 80100990.
>
> DISTRICT DIRECTOR OF CUSTOMS,
> *701 San Jacinto Street,*
> *Houston, Tex.*
>
> SIR: In connection with the above reference, please find attached the following documents:
>
> Copy of the export ocean bill of lading at Houston, Tex., executed on April 16, 1972, B/L 8 with attachments as to the items exported.
>
> Copy of the export insurance certificate No. 6894 covering the export shipment.
>
> Atwood Oceanics, Inc., export invoices Nos. 21200, 21201, 21208, 21207, covering the original exportation of this importation.
>
> Copies of the shipper's export declarations Nos. 76830, 76975, 76839, 77037.
>
> International Tool invoice.
>
> Telex of August 17, 1973.
>
> Customs form 3311 completely executed.
>
> This particular entry was placed away through error in our filing system, and only came to light upon liquidation of the entry.
>
> Under the circumstances withe [sic] documents attached and a completed Customs form 3311, we respectfully ask that the entry be reliquidated withe [sic] the cancelation [sic] of the duties assessed as provided for under section 520(c)(1), Tariff Act of 1930, as amended, as an inadvertence, and section 173.3 [sic], Customs Regulations.
>
> Respectfully,
>
> LABAY INTERNATIONAL, INC.,
> ALLEN LABAY.

This request for reliquidation was denied by Customs on December 4, 1974, the day of its receipt.

On January 17, 1975, 91 days after liquidation, plaintiff filed a protest on Customs form 19 which was denied on January 27, 1975, as untimely.

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[1] Sec. 520(c)(1) authorizes Customs to reliquidate an entry to correct a clerical error, mistake, or fact, or other inadvertence—notwithstanding a valid protest was not filed.

On February 4, 1975, plaintiff again wrote to the district director at Houston again requesting review of the entry relying upon section 520(c)(1) and section 173.4 of the Customs Regulations because of plaintiff's inadvertence.

On March 25, 1975, the district director at Houston informed plaintiff that its request for reliquidation in its letter of December 4, 1974, was denied.

On May 9, 1975, plaintiff again filed a protest on Customs form 19 against the refusal to reliquidate under section 520(c)(1). This protest was denied on June 16, 1975.[2]

On September 23, 1976, plaintiff requested accelerated disposition of the letter filed on December 4, 1974. On October 22, 1976, the district director denied this request for accelerated disposition on the basis that he did not consider the letter of December 4, 1974, to be a protest.

On November 18, 1976, plaintiff filed summons No. 76–11–02561 in this court claiming that its alleged protest of December 4, 1974, was denied on October 23, 1976 [sic].

With these facts in mind, we consider now the first question—whether a legally sufficient protest was filed within the 90-day period required by 19 U.S.C. 1514(b)(2). As to this, plaintiff's position is that its letter of December 4, 1974, which was filed after the liquidation of the merchandise on October 18, 1974—was a valid protest. The court agrees.

At the outset, it is to be observed that "a protest is not required to be made with technical precision, but the objections must be distinct, specific, and sufficient to show that the objection made * * * was in the mind of the importer and was brought to the attention of the collector, so he might have an opportunity to correct his mistake, if any." Sturm, "A Manual of Customs Law" (1974), page 9. However cryptic, inartistic, or poorly drawn a communication may be, it is sufficient as a protest if it conveys enough information to apprise officials of the importer's intent and the relief sought. *Mattel, Inc.* v. *United States*, 72 Cust. Ct. 257, C.D. 4547, 377 F. Supp. 955 (1974). In *Mattel*, it was held that a letter requesting correction under section 520(c) of the Tariff Act of 1930, as amended, and citing a case involving similar merchandise, was sufficient to meet the protest requirements of section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) since it set forth the importer's claim clearly. The reference to section 520(c) was treated as a gratuitous addition. Since the claim was made

[2] On Dec. 12, 1975, plaintiff filed a summons against the denial on June 16, 1975, of the protest of May 9, 1975. This summons was denominated Court No. 75–12–03184. However, on Sept. 9, 1977, plaintiff abandoned that action.

within the statutory period for filing protests, the court held that it had jurisdiction.

Against this background, it must be concluded that the December 4, 1974 letter was sufficient as a protest since it conveyed enough information to apprise the district director of the importer's intent and the relief sought. Thus, the letter itself and its attachments clearly indicated the entry number, the date of liquidation, the specific merchandise concerned, the dates of export of such merchandise from the Port of Houston, a request that the liquidated duties be canceled, and that plaintiff was claiming the merchandise in question consisted of American goods returned and should be classified as such under item 800.00, free of duty. The fact that the district director treated the December 4, 1974 letter as a section 520(c) request rather than as a section 514 protest is scarcely controlling for "[t]he test for determining the sufficiency of a protest under section 514 * * * is an objective one and is not dependent upon the district director's subjective reaction thereto." *Mattel, Inc.* v. *United States*, *supra*, 72 Cust. Ct. at 266.

In sum, it is held that the December 4, 1974 letter was a sufficient and timely protest.[3]

But even though this December 4, 1974 letter was a valid protest, the court lacks jurisdiction since the summons was filed on November 18, 1976, more than 180 days after the denial of the protest.

Plaintiff, however, contends that defendant did not provide it with a "notice of denial" as required by 28 U.S.C. 2631. The contention is without merit. The record establishes that plaintiff's request of December 4, 1974, was denied on December 4, 1974, by Customs entry aid, Denzil R. Harrelson, after consulting with his supervisor, Customs import compliance officer, Steve H. Lee, and was written directly on plaintiff's request. Further, the denial was received by plaintiff on December 4, 1974, as evidenced by the date stamp of plaintiff, Labay International, on the upper, right-hand side of the letter.

The specific denial is contained in a notation on the bottom of plaintiff's letter of December 4, 4974, and reads as follows:

> Allen [Labay]
>
> Steve and I have looked over these documents and there is not anything that we can do about reliquidating.
>
> DENNY H.

---

[3] At a previous stage in this litigation, defendant moved to dismiss the action for lack of jurisdiction on the sole ground that the Dec. 4, 1974 letter did not constitute a valid protest. That motion was denied.

The only requirements concerning the form of a denial of a protest are found in 19 CFR 174.29 and 174.30 (1974). 19 CFR 174.29 states in pertinent part:

> The district director shall allow or deny in whole or in part a protest filed in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) within 2 years from the date the protest was filed. * * * If the protest is denied in whole or in part the district director shall give notice of the denial in the form and manner prescribed in section 174.30.

19 CFR 174.30 states in pertientnt part:

> (a) *Issuance of notice.*—Notice of denial of a protest shall be mailed to any person filing a protest or his agent in all cases * * * For purposes of section 515(a), Tariff Act of 1930, as amended (19 U.S.C. 1515(a)), the date appearing on such notice shall be deemed the date on which such notice was mailed.

Plaintiff does not dispute that during the period in question, Customs entry aid Harrelson and Custom import compliance officer Lee had authority to act for the district director on this matter. Therefore, since the court has held that the December 4, 1974 letter is a valid protest, it necessarily follows that the protest was denied on the same date by the notation on that letter.

There is no precise form that a denial of a protest must take. Thus in *Ogden Marine, Inc.* v. *United States*, 60 CCPA 110, C.A.D. 1090, 473 F. 2d 1405 (1973) a carbon copy of a protest was returned to the plaintiff with notations of denial thereon. The court held that this constituted a valid "notice of denial" because "(n)otice of 'denial' is all that the statute requires. Nor * * * (is) it mandatory that the form be labeled in any particular manner so long as the necessary information is unequivocally conveyed to the proper party." 60 CCPA at 112. Similarly in the present case, Customs unequivocally conveyed to plaintiff notice that the request in its December 4, 1974 letter for duty-free entry as American goods returned was denied.

What is more, even assuming contrary to the actual situation that the notation on the December 4, 1974 letter was not sufficient, certainly Customs letter of March 25, 1975, was a plain and explicit denial. For on March 25, 1975, the district director wrote plaintiff stating in part:

> 6. Your letter, received December 4, 1974, requested that the entry be reliquidated with the cancellation of the duties assessed under section 520(c)(1), Tariff Act of 1930, as an inadvertence. You attached what you described as a completed CF 3311. This

document was not acceptable. *Your request was denied.* [Italic added.]

* * * * * * *

* * * [Y]ou were notified on four separate occasions of the necessity of providing evidentiary documents in order for liquidation or reliquidation to be made under TSUS 800.00. It is the opinion of this office that the failure to file required documents whose absence was repeatedly called to your attention constitutes negligent inaction on your part.

Your unsatisfactory untimely efforts to effect correction did not contribute to a solution to this problem. It is the position of this office that relief under section 520(c)(1), Tariff Act of 1930, *cannot be granted.* [Italic added.]

The court is mindful that the summons filed in this action claims that plaintiff's protest was denied on October 23, 1976. This is presumably based on plaintiff's request of September 23, 1976, for accelerated disposition of its letter of December 4, 1974. However, this request for accelerated disposition was nothing more than a meaningless act since plaintiff's letter of December 4, 1974, had already been denied previously.

Finally, plaintiff contends that the denials of December 4, 1974, and March 25, 1975, were no more than denials of its December 4, 1974 request for reliquidation under section 520(c). But plaintiff cannot have it both ways. Plaintiff cannot contend on the one hand that the claim in its letter of December 4, 1974, was a valid protest and on the other hand argue that denial of this claim was not denial of a protest. If the letter of December 4, 1974, is to be considered a valid protest by the court (and, as previously discussed, the court so considers it), then Customs denial of the claim contained in that letter was necessarily a denial of the protest.

It is therefore held that since the summons in this action was filed November 18, 1976, more than 180 days after the denials of December 4, 1974, and March 25, 1975, the action is time-barred by 28 U.S.C. 2631 and is hereby dismissed.

# Decisions of the United States Customs Court

## *Customs Rules Decision*

(C.R.D. 79–18)

AIRCO, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

*Memorandum to Accompany Order*

Court No. 76–3–00643

[Motion for substitution as party-plaintiff granted.]

(Dated December 19, 1979)

*Frederick L. Ikenson* for the plaintiff.
*Alice Daniel*, Assistant Attorney General: *David M. Cohen*, Director, Commercial Litigation Branch (*Sheila N. Ziff* on the briefs), for the defendant.

RICHARDSON, Judge: Macalloy Corp., the successor to Airco, Inc., in Charleston, S.C., seeks to be substituted as party plaintiff in the above-mentioned action. The defendant opposed the substitution, contending in substance that because the transfer documents do not recite specifically that "a chose in action" is being transferred to Macalloy Corp. it cannot be substituted for Airco, Inc., in this litigation.

It is clear from plaintiff's exhibit A, "Agreement For Purchase and Sale of Assets," and exhibit D, "Bill of Sale" of Airco, Inc.'s plant which was producing high-carbon ferrochrome at its Charleston, S.C., facility; exhibit 1, "Affidavit of Angelo N. Tarallo, Assistant Vice President of Airco, Inc."; exhibit 2, "Affidavit of Hanno D. Mott, Secretary and Director of Macalloy Corp."; and the other exhibits submitted by counsel for Airco, Inc., that the right of Macalloy Corp., to be substituted for Airco, Inc., in this action was included in the bill of sale.

The bill of sale recites "that all assets * * * whether now owned or hereafter acquired, whether tangible or intangible, * * * are sold to the purchaser." A company's claim being made in pending litigation at the time the company is sold is an intangible asset. Exhibit G to the agreement for purchase and sale specifically mentions this litigation.

Mr. Tarallo of Airco, Inc., in his affidavit, states that he was a principal negotiator and draftsman for Airco, Inc., of the agreement of sale and "that (1) it was the intent of Airco, Inc., to convey its interest, rights, and obligations in this litigation, subject to the court's approval, to Macalloy Corp. and to no one else; and (2) Airco, Inc., has not retained any ferrochrome inventory or other interest in, ferrochrome. Airco, Inc., is not at this time a manufacturer, wholesaler, or producer of ferrochrome."

Mr. MOTT of Macalloy Corp., in his affidavit, asserts that "* * * it was the clear intent of the parties that all of the assets, properties, and business of Airco's Charleston operation, whether tangible or intangible * * * were to be conveyed and transferred by Airco to Macalloy. * * * Among the assets to be transferred to Macalloy were all of Airco's rights and interest in the above-captioned litigation."

The excerpts from the above-mentioned exhibits make it clear that the documents of transfer purported to transfer and it was intent of the seller and purchaser to transfer from Airco, Inc., to Macalloy Corp. all of Airco, Inc.'s rights and interest in this litigation and that it is appropriate that Macalloy Corp. be substituted for Airco, Inc., as party plaintiff.

# Decisions of the United States Customs Court

## *Abstracts*

## *Abstracted Protest Decisions*

DEPARTMENT OF THE TREASURY, *December 26, 1979.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
*Commissioner of Customs.*

| DECISION NUMBER | JUDGE & DATE OF DECISION | PLAINTIFF | COURT NO. | ASSESSED | HELD | BASIS | PORT OF ENTRY AND MERCHANDISE |
|---|---|---|---|---|---|---|---|
| | | | | Par. or Item No. and Rate | Par. or Item No. and Rate | | |
| P79/225 | Watson, J. Decided on remand of C.D. 4685 (C.A.D. 1206) | Mobay Chemical Corp. et al. | 70/36742, etc. | Item 409.00 7¢ per lb. + 45%; 6.3¢ per lb. + 40%; 5.5¢ per lb. + 36%; 4.9¢ | Item 405.25 2.8¢ per lb. + 18%; 2.5¢ per lb. + 16%; 2.2¢ per lb. + 14%; 1.9¢ | Agreed statement of facts | New York ep White or black urethane pastes, which contain no benzenoid pigments, are products formed by condensation, polymeriza- |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | December 18, 1979 | | | per lb. + 31%; 4¢ per lb. + 27%; or 3.5¢ per lb. + 22.5% (items marked "A" and "B") | per lb. + 12.5%; 1.6¢ per lb. + 10.5%; or 1.4¢ per lb. 9% (items marked "A") Item 406.70 40%, 36%, 32%, 28%, 24% or 20% (items marked "B") | | tion, or copolymerization of organic chemicals to which plasticizers, fillers, colors, or extenders have been added, and are "plastic materials" within definition of said term as provided for by headnote 3 of subpart C of part 1 of schedule 4, TSUS (items marked "A") All involved urethane pastes other than those described as "black" or "white", which are products obtained, derived, or manufactured in whole or in part from products provided for in subpart A or B of part 1 of schedule 4, TSUS, and are colors, lakes, or toners used only as coloring agents (items marked "B") |

# Decisions of the United States Customs Court

## *Abstracts*

## *Abstracted Reappraisement Decisions*

| DECISION NUMBER | JUDGE & DATE OF DECISION | PLAINTIFF | COURT NO. | BASIS OF VALUATION | HELD VALUE | BASIS | PORT OF ENTRY AND MERCHANDISE |
|---|---|---|---|---|---|---|---|
| R79/264 | Re, C. J. December 18, 1979 | Belcrest Linens, Inc. | 76-11-02432, etc. | Constructed value | Invoice unit values plus an additional 5% of costs for materials and for shipping materials from place of manufacture of materials to place of manufacture of finished imported product (Hong Kong) | Agreed statement of facts | New York Dry goods |
| R79/265 | Newman, J. December 18, 1979 | Yoshida International, Inc. YKK Zipper (USA), Inc., et al. | 73-8-02132, etc. | Constructed value (if exported from Japan prior to 2/1/72) United States value (if exported on or after 2/1/72) | Equal to invoiced unit prices plus 8.5%, net, packed Equal to invoiced unit prices, net, packed | Agreed statement of facts | New York Zippers and/or zipper parts, classified under item 745.70, 745.72 or 745.74 |

# International Trade Commission Notices

*Investigations by the U.S. International Trade Commission*

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

R. E. CHASEN,
*Commissioner of Customs.*

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(TA–503(a)–6 and 332–107)

President's List of Articles Which May Be Designated as Eligible Articles for Purposes of the Generalized System of Preferences

AGENCY: U.S. International Trade Commission.

ACTION: In accordance with the provisions of sections 503(a) and 131(b) of the Trade Act of 1974 (hereinafter referred to as the act) and section 332(g) of the Tariff Act of 1930, as amended, the Commission has instituted investigation TA–503(a)–6 and 332–107 for the purpose of obtaining, to the extent practicable, information of the kind described in section 131(d) of the act. This information is for use in connection with the preparation of advice requested by the Special Representative for Trade Negotiations (STR) with respect to certain listed articles as to the probable economic effects on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties under the U.S. Generalized System of Preferences (GSP).

EFFECTIVE DATE: December 20, 1979.

FOR FURTHER INFORMATION CONTACT: (1) Agricultural products, Mr. Ed Furlow, 202–523–0234; (2) textile products, Mr.

Reuben Schwartz, 202–523–0114; (3) chemical products, Dr. Aimison Jonnard, 202–523–0423; (4) metals and metal products, Mr. William Wright, 202–523–0275, Office of Industries, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; (5) legal aspects, Terry K. Smith, Esq., 202–523–0311, Office of General Counsel, at the same address.

SUPPLEMENTARY INFORMATION: On December 7, 1979, in accordance with sections 503(a) and 131(a) of the act and pursuant to the authority of the President delegated to the STR by Executive Order 11846, as amended by Executive Order 11947, the STR furnished the U.S. International Trade Commission the attached list of articles which are being considered for designation as eligible articles for purposes of the GSP set forth in title V of the act.

Specifically, the STR has requested that the Commission provide its advice, with respect to each listed article, as to the probable economic effects on U.S. industries producing like or directly competitive articles and on consumers of the elimination of the U.S. import duties under the GSP.

In providing its advice, the STR requested the Commission to assume that benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the "competitive-need" limitations specified in section 504(c) of the act.

Section 504(d) of the act exempts from one of the competitive-need limits in section 504(c) articles for which no like or directly competitive article was being produced in the United States on the date of enactment of the act. Accordingly, pursuant to the authority of section 332(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1332(g)), and in conformity with the delegation of authority from the President to him of Executive Order 11846 as amended by Executive Order 11947, the STR requested that the Commission also provide advice with respect to whether products like or directly competitive with any products described in the attached tariff categories were being produced in the United States on January 3, 1975.

*Public hearing.*—A public hearing in connection with the investigation will be held in the Commission hearing room, 701 E Street NW., Washington, D.C. 20436, beginning at 10 a.m., e.s.t., on January 24, 1980. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International

Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, January 18, 1980.

*Written submissions.*—In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be insured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than February 6, 1980. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

By order of the Commission.

Issued: December 21, 1979.

KENNETH R. MASON,
*Secretary.*

Attachment.

ARTICLES BEING CONSIDERED FOR DESIGNATION AS ELIGIBLE ARTICLES FOR PURPOSES OF THE GENERALIZED SYSTEM OF PREFERENCES

| TSUS or TSUSA item | Article |
|---|---|
| | [The bracketed language in this list has been included only to clarify the scope of the numbered items which are being considered, and such language is not itself intended to describe articles which are under consideration] |
| 130.45 | Oats, hulled or not hulled |
| | Vegetables (whether or not reduced in size), packed in salt, in brine, pickled, or otherwise prepared or preserved (except vegetables in schedule 1, part 8, subpart B of the Tariff Schedules of the United States Annotated): |
| | [Beans; cabbage; chickpeas or garbanzos; black-eye cowpeas; onions; peas; pimientos; tomatoes; waterchestnuts] |
| | Other: |
| | [Packed in salt, in brine, or pickled] |
| | Other: |
| | [Palm hearts] |
| | Other: |
| | [Frozen] |
| | Other: |
| | [Artichokes; asparagus; potatoes, dehydrated] |

ARTICLES BEING CONSIDERED FOR DESIGNATION AS ELIGIBLE ARTICLES FOR PURPOSES OF THE GENERALIZED SYSTEM OF PREFERENCES—Continued

| TSUS or TSUSA item | Article |
|---|---|
| 141.8180 [1] | Other |
| or | or |
| 141.8180 pt. | Tender cactus |
| or | or |
| 141.8180 pt. | Pre-cooked rice |
| | Berries, fresh, or prepared or preserved: |
| | [Fresh or in brine; dried] |
| | Otherwise prepared or preserved: |
| | [Blueberries; black currants, gooseberries, lingon or partridge berries, and loganberries] |
| | Other berries: |
| | Frozen: |
| | [Strawberries] |
| 146.7550 [2] | Other |
| or | or |
| 146.7550 pt. | Blackberries |
| | Grapes, fresh, or prepared or preserved: |
| | [Fresh (in bulk, or in crates, barrels or other packages); dried] |
| 147.77 | Otherwise prepared or preserved |
| or | or |
| 147.77 pt. | Grape must |
| | Olives, fresh, or prepared or preserved: |
| | [Fresh] |
| | In brine, whether or not pitted or stuffed: |
| | Not ripe and not pitted or stuffed: |
| | [Not green in color and not packed in airtight containers of glass, metal, or glass and metal] |
| 148.44 | Other |
| 148.50 | Pitted or stuffed |
| | [Dried] |
| 148.56 | Otherwise prepared or preserved |
| | Papayas, fresh, or prepared or preserved: |
| 148.60 | Fresh |
| | Wrapper tobacco (whether or not mixed or packed with filler tobacco): |
| 170.10 | Not stemmed |
| 170.15 | Stemmed |
| 170.65 | Cigarettes |
| or | or |
| 170.65 pt. | Bidis |
| | Cigars and cheroots: |
| 170.66 | Cigars each valued 15 cents or over |
| 175.36 | Poppy seed |
| | Yarns of wool or hair: |
| | [Yarns of wool, colored, and cut into uniform lengths of not over 3 inches, in immediate packages or containers not over 6 ounces in weight including the weight of the immediate package or container] |
| | Other: |
| | [Of angora rabbit hair] |
| 307.64 | Other |
| or | or |
| 307.64 pt. | Yarns, handspun and handdyed |
| | Cordage: |
| | Of vegetable fibers: |
| | Of jute: |
| | Not bleached, not colored, and not treated: |

Note.— See footnotes at end of table.

ARTICLES BEING CONSIDERED FOR DESIGNATION AS ELIGIBLE ARTICLES FOR PURPOSES OF THE GENERALIZED SYSTEM OF PREFERENCES—Continued

| TSUS or TSUSA item | Article |
|---|---|
| 315.80 | The singles yarn of which measures under 720 yards per pound |
| 315.85 | The singles yarn of which measures 720 yards or over per pound |
| | Bleached, colored, or treated: |
| 315.90 | The singles yarn of which measures under 720 yards per pound |
| 315.95 | The singles yarn of which measures 720 yards or over per pound |
| | Woven fabrics, of silk: |
| | Wholly of silk: |
| | Jacquard-figured: |
| 337.40 | Degummed, bleached, or colored |
| | Woven or knit fabrics (except pile or tufted fabrics), of textile materials, coated or filled with rubber or plastics material, or laminated with sheet rubber or plastics: |
| | Of man-made fibers: |
| 355.81 | Over 70 percent by weight of rubber or plastics |
| | Floor coverings of pile or tufted construction, of textile materials: |
| | In which the pile was inserted or knotted during weaving or knitting: |
| | With pile hand-inserted or hand-knotted: |
| | [With over 50 percent by weight of the pile being hair of the alpaca, guanaco, huarizo, llama, misti, suri, or any combination of these hairs] |
| | Other: |
| 360.15 | Valued over 66⅔ cents per square foot |
| | Floor coverings not specially provided for, of textile materials: |
| | Of wool: |
| | Woven, but not made on a power-driven loom: |
| 361.44 | Valued over 30 cents per square foot |
| | Tapestries, including hand-worked petit-point and other needle-point tapestries, all the foregoing of textile materials: |
| | [Gobelin and other hand-woven tapestries fit only for use as wall hangings, and valued over $20 per square foot] |
| | Other: |
| | Of wool: |
| 364.22 | Valued over $2 per pound |
| or | or |
| 364.22 pt. | Hand-woven mohair tapestries |
| | Bags and sacks, or other shipping containers, of textile materials: |
| | Of vegetable fibers, except cotton: |
| 385.45 | Not bleached, not colored, and not rendered nonflammable |
| | Articles not specially provided for, of textile materials: |
| | [Lace or net articles, whether or not ornamented, and other articles ornamented] |
| | Other articles, not ornamented: |
| | Of man-made fibers: |
| | [Knit (except pile or tufted construction); pile or tufted construction] |
| | Other: |
| | [Artificial flowers] |
| | Other: |
| | [Tents and tarpaulins; shoe uppers; inked ribbons] |
| 389.6260 | Other |
| or | or |
| 389.6260 pt. | Nylon sleeping bags |
| | Alcohols, monohydric, unsubstituted: |
| 427.88 | Ethyl for nonbeverage purposes |
| | Pipes and tubes and blanks therefor, all the foregoing of iron (except cast iron) or steel: |
| | Welded, jointed, or seamed, with walls not thinner than 0.065 inch, and of circular cross section: |
| | Other than alloy iron or steel: |
| | 0.375 inch or more in outside diameter: |
| | [Suitable for use in boilers, superheaters, heat exchangers, condensers and feedwater heaters] |

ARTICLES BEING CONSIDERED FOR DESIGNATION AS ELIGIBLE ARTICLES FOR PURPOSES OF THE GENERALIZED SYSTEM OF PREFERENCES—Continued

| TSUS or TSUSA item | Article |
|---|---|
| | Other: |
| 610.3265 | Over 16 inches in outside diameter |
| | Unwrought aluminum: |
| | [Of uniform cross-section throughout its length, the least cross-sectional dimension of which is not greater than 0.375 inch, in coils] |
| | Other: |
| 618.02 | Aluminum other than alloys of aluminum |
| | Alloys of aluminum: |
| | [Aluminum silicon] |
| 618.06 | Other |
| | Unwrought lead: |
| | [Lead bullion] |
| | Other: |
| 624.0330 | Alloyed |

[1] Effective Jan. 1, 1980, TSUSA item 141.8180 will be discontinued (redesignated as 141.78, .82, .83, .84, .8630, .87, and .8860).

[2] Effective Jan. 1, 1980, TSUSA item 146.7550 will be discontinued (redesignated as 146.71, .74, and .77).

In the Matter of
CERTAIN COMPACT CYCLOTRONS WITH A PRE-SEPTUM } Investigation No. 337–TA–61

*Notice of Termination*

Upon consideration of the presiding officer's recommended determination and the record in this proceeding, the Commission is ordering the termination of investigation No. 337–TA–61, "Certain Compact Cyclotrons with a Pre-septum," by granting a motion by all parties to terminate this investigation (motion docket No. 61–3) and accepting a consent order agreement proposed by complainant and the principal respondent.

Any party wishing to petition for reconsideration of the Commission's action must do so within 14 days of service of the Commission order, action, and opinion. Such petitions must be in accord with section 210.56 of the Commission rules (19 CFR 210.56). Any person adversely affected by a final Commission action may appeal such action to the U.S. Court of Customs and Patent Appeals.

Copies of the Commission's order and Commissioners' opinion (USITC publication No. 1024, December 1979) are available to the public during official working hours at the Office of the Secretary,

U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0161. Notice of the institution of the Commission's investigation was published in the Federal Register of December 28, 1978 (43 F.R. 60674). The text of the proposed consent order agreement and the Commission's request for public comments thereon were published in the Federal Register of October 24, 1979 (44 F.R. 61270).

By order of the Commission.

Issued: December 21, 1979.

KENNETH R. MASON,
*Secretary.*

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|---|---|
| In the Matter of<br>CERTAIN TURNING MACHINES AND COMPONENTS THEREOF | Investigation No. 337–TA–72 |

*Notice of Amendment to Complaint and Notice of Investigation*

Upon consideration of motion docket No. 72–3, as certified to the Commission by the administrative law judge on November 28, 1979, together with the supporting documents filed by the complainant and the Commission investigative attorney, and the ALJ's recommendation of November 28, 1979, that the complaint and notice of investigation be amended, the Commission is ordering the addition of the following new respondents to the complaint and the notice of investigation:

Tsugami Corp.
1–18–16 Shinbashi, Minato-ku
Tokyo, Japan
REM Sales Inc.
West Hartford, Conn. 06107

Copies of the Commission action and order and the Commission opinion are available to the public during official working hours at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

By order of the Commission.

Issued: December 21, 1979.

KENNETH R. MASON,
*Secretary.*

| | |
|---|---|
| In the Matter of<br>CERTAIN ROTARY SCRAPING TOOLS | Investigation No. 337–TA–62 |

*Notice of the Commission Procedure on the Presiding Officer's Recommended Determinations and Relief, Bonding, and the Public Interest, and of the Schedule for Filing Written Submissions*

RECOMMENDATIONS OF VIOLATION ISSUED

In connection with this investigation by the U.S. International Trade Commission under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), of alleged unfair methods of competition and unfair acts in the importation of certain rotary scraping tools into the United States, or in their sale, and by reason of misleading packaging and/or deceptive advertising of the imported rotary scraping tools, including the simulation of complainant's trade dress, the presiding officer recommended on July 25, 1979, that the Commission—

(1) Grant a joint motion for summary determination as to six of the seven named respondents;

(2) Determine that there is a violation of section 337 as to these respondents; and

(3) Determine that there is no violation as to one respondent, Caprice Products.

The presiding officer further recommended on September 18, 1979, that the Commission—

(1) Grant a second joint motion for summary determination as to twenty additional named respondents; and

(2) Determine that there is a violation of section 337 as to these respondents.

The presiding officer certified to the Commission for its consideration two joint motions, motions Nos. 62–5 and 62–6, and the supporting papers submitted therewith. Interested persons may obtain copies of the presiding officer's recommended determinations of July 25, 1979, and September 18, 1979 (and all other public documents), by contacting the office of the Secretary to the Commission, 701 E Streeet NW., Washington, D.C. 20436; telephone 202–523–0161.

REQUESTS FOR ORAL ARGUMENT AND ORAL PRESENTATION

At present, no oral argument is planned with respect to the recommended determinations of the presiding officer. Similarly, no oral presentation is planned with respect to the subject matter of section 210.14(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.14(a)) concerning relief, bonding, and the public-interest

factors set forth in subsections (d), (f), and (g)(3) of section 337 of the Tariff Act of 1930, as amended, which the Commission is to consider if it determines that there should be relief. However, the Commission will consider written requests for an oral argument or an oral presentation if they are received by the Secretary to the Commission no later than the close of business (5:15 p.m., e.d.t.), on January 2, 1980.

WRITTEN SUBMISSIONS TO THE COMMISSION

The Commission requests that written submissions of three types be filed no later than the close of business on January 2, 1980.

1. *Briefs on the presiding officer's recommended determination.*—Parties to the Commission's investigation, interested agencies, and the Commission investigative staff are encouraged to file briefs concerning exceptions to the presiding officer's recommended determination. Briefs must be served on all parties of record to the Commission's investigation on or before the date they are filed with the Secretary. Statements made in briefs should be supported by reference to the record. Persons with the same positions are encouraged to consolidate their briefs, if possible.

2. *Written comments and information concerning relief, bonding, and the public interest.*—Parties to the Commission's investigation, interested agencies, public-interest groups, and any other interested members of the public are encouraged to file written comments and information concerning relief, bonding, and the public interest. These submissions should include a proposed remedy, a proposed determination of bonding, and a discussion of the effect of the proposals on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers. These written submissions will be very useful to the Commission if it determines that there is a violation of section 337 and that relief should be granted.

3. *Requests for oral argument and oral presentation.*—Written requests that the Commission hold oral argument and/or oral presentation must be filed with the Secretary to the Commission as described above.

ADDITIONAL INFORMATION

The original and 19 true copies of all briefs, written comments, and any written request must be filed with the Secretary to the Commission.

Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request in camera treatment. Such request should be directed to the Chairman of the Commission and must include a full statement of the reasons why the Commission

should grant such treatment. The Commission will either accept such submission in confidence or return it. All nonconfidential written submissions will be open to public inspection at the Secretary's Office.

Notice of the Commission's investigation was published in the Federal Register of January 10, 1979 (44 F.R. 2207); notice of the Commission's amendment to the supplemented complaint and notice of investigation was published in the Federal Register of July 18, 1979 (44 F.R. 41972).

By order of the Commission.

Issued: December 19, 1979.

KENNETH R. MASON.
*Secretary.*

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In the Matter of
CERTAIN FOOD SLICERS } Investigation No. 337–TA–76

*Notice of Change of Commission Investigative Attorney*

Donald R. Dinan is designated Commission investigative attorney for investigation No. 337–TA–76, "Certain Food Slicers," replacing JoAnn Miles. The service of all papers on the Commission investigative attorney should henceforth be served upon Mr. Dinan, effective Wednesday, December 26, 1979.

The Secretary is requested to publish this notice in the Federal Register.

Dated: December 20, 1979.

EARL LEVY,
*Deputy Director,*
*Office of Legal Services.*

# Index

## Customs Service



## Customs Court

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